

## II. REMARKS

### Preliminary Remarks

Claim 35 is amended and claim 36 is canceled. Upon entry of the amendment, claims 5, 7, 22-23, 28-29, 31-33 and 35 will be pending in this application. Please note that claim 34 is listed with the allowed claims in the official action; however, claim 34 was canceled by the response filed on January 30, 2006.

Claim 35 is amended to be directed to plasmid expression vector pXKgpmexp contained in deposit DSM13456, support for which is found in the specification, *e.g.*, in lines 5-6 on page 16 of the originally filed specification.

**The applicants do not intend by these or any amendments to abandon subject matter of the claims as originally filed or later presented, and reserve the right to pursue such subject matter in continuing applications.**

### Patentability Remarks

#### **A. 35 U.S.C. § 112, First Paragraph Rejection / Written Description**

Claims 35 and 36 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter for which there is insufficient written description in the specification. The examiner alleges that the specification does not describe a representative number of species commensurate with the scope of the claims. Please note that claim 36 is canceled.

Claim 35 is amended to be directed to plasmid expression vector pXKgpmexp contained in deposit DSM13456. As noted above, the invention of amended claim 35 is clearly described in the specification, *e.g.*, on page 16, lines 5-6. Withdrawal of the rejection of claim 35 under 35 U.S.C. § 112, first paragraph, for alleged lack of written description is therefore respectfully requested.

#### **B. 35 U.S.C. § 112, First Paragraph Rejection / Scope of Enablement**

Claims 35 and 36 are further rejected under 35 U.S.C. § 112, first paragraph, because the specification is considered to enable one of skill in the art to make or use the claimed invention

wherein the polynucleotide comprises SEQ ID NO: 1, but allegedly does not enable a “nucleic acid comprising a polynucleotide sequence contained in deposit DSM13456” as specified in claim 35. The examiner alleges that the claims read on a polynucleotide encoding a modified or substituted amino acid sequence of unknown and unpredictable activity and utility, and that one of skill in the art would have to perform undue experimentation to make and use the invention of claims 35 and 36.

Claim 35 is amended to be directed to plasmid expression vector pXKgpmexp contained in deposit DSM13456, and claim 36 is canceled, as discussed above. The applicants submit that one of skill in the art would be able to make and use the plasmid expression vector of amended claim 35 without having to perform undue experimentation, and that amended claim 35 complies with the enablement requirements of 35 U.S.C. §112, first paragraph. Withdrawal of the rejection of claim 35 under 35 U.S.C. § 112, first paragraph, for alleged lack of enablement is therefore respectfully requested.

**C. 35 U.S.C. § 102(a), Novelty**

Claims 35 and 36 are further rejected under 35 U.S.C. §102(a) as allegedly being anticipated by White et al. (January, 1992), which describes a polynucleotide from Streptomyces coelicolor encoding a phosphoglycerate mutase enzyme that comprises nucleotide sequences present in deposit DSM13456.

Claim 35 is amended to be directed to plasmid expression vector pXKgpmexp contained in deposit DSM13456, and claim 36 is canceled, as discussed above. White et al. does not describe or suggest making or using plasmid expression vector pXKgpmexp, and so does not anticipate amended claim 35. Withdrawal of the rejection of claim 35 under 35 U.S.C. § 102(a) as allegedly being anticipated by White et al. is therefore respectfully requested.

### III. CONCLUSION

In view of the foregoing, the applicants believe that the claims are in form for allowance, and hereby respectfully solicit such action. If any point remains in issue which the examiner feels may be best resolved through a personal or telephone interview, the examiner is strongly urged to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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